IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/10/2003

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

Application No.2225 of 2000

M/s.Agri Development Finance
(Tamilnadu) Ltd.,
1-B, Century Plaza,
560-562, Anna Salai,
Teynampet, Chennai-600 018. ..Applicant

-Vs-

1. M/s.Eerattil Poultry &
Agro Farms Pvt. Ltd.,
I Floor, Everest Complex,
Opp. to Municipal Office,
Palayamkottai,
Tirunelveli-627 002.

2.A.Sharafudeen

3.N.Sirajudeen

4.Smt.Nazeema Beevi

5.Smt.Mahar Banu .. Respondents

:For applicant : Mr.M.S.Kandasaami

For Respondents: ---

:ORDER

The applicant has sought for leave to sue the defendants in this Court.

2. The applicant is the plaintiff and the proposed suit is against the defendants to direct them to pay a sum of Rs.71,78,351.00 with interest within a time fixed by this Court and on failure, to sell the mortgaged property mentioned in the schedule and also for a personal decree against the

defendants for the balance.

According to the applicant, the respondents/defendants availed a term loan of Rs.76 lakhs from the applicant for starting of a Dairy Farm by mortgaging the properties which are situated at Thiruvananthapuram by deposit of title deeds at Madras and the agreements entered into between the applicant and the respondents stipulate that for adjudication of disputes, the Court at Chennai shall have the exclusive jurisdiction. The applicant has further stated that the respondents committed default in repayment and the cause of action arose at Madras where the loan was availed and where the documents were executed and where the loan was repayable. According to the applicant, the suit is not for recovery of possession of land and no question of title to the immovable property is involved and it is only for the enforcement of debt and even though the properties mortgaged are outside the jurisdiction of this Court, the suit is cognizable by this Court, since a substantial portion of cause of action has arisen at Madras.

3. The service on the respondents was completed by substituted service and the respondents did not appear either through counsel or in person and remained absent.

4. The point for determination is as to whether leave can be granted to the applicant to sue the defendants in this Court.

5. The learned counsel for the applicant contends that the suit is filed only for recovery of the loan amount with interest on account of the default committed by the respondents in repayment and an agreement entered into between the parties confers exclusive jurisdiction of the Court at Chennai to adjudicate any dispute and the suit is neither for recovery of possession of immovable property nor the question of title to immovable property involved and even though the properties mortgaged are situated outside the jurisdiction, this Court will have jurisdiction to entertain the suit and hence the leave sought for has to be granted. The learned counsel relied on a Division Bench Judgment of this Court in Southern Petrochemical Industries Corporation Ltd. v. Durga Iron Works and 3 others, reported in 1995 (II) CTC 6 02 in this regard.

6. In that case, the leave was sought for to institute suits for recovery of money by enforcement of equitable mortgages, created by deposits of title deeds within the jurisdiction of the Original Side of this Court and the Division Bench of this Court, while allowing the applications, held as under.

"In a suit to recover money due under a mortgage, when we apply the above tests, it is not possible to say that the suit will come within the mischief of any of the above tests. There may not be a determination of title to the land as such. Equally so, there may not be straightway a decree for recovery of possession of land. Primarily the decree will be one for recovery of money. Only when there is a default, a final decree may ensue permitting recourse to the land in satisfaction of the money claim. Even then, there is no determination of title to the land and there is no decree for recovery of

possession."
The above decision still holds good for the proposition of law laid down.
7. In this context, attention of the Court was also drawn to the latest pronouncement of the Supreme Court in ADCON ELECTRONICS PVT. LTD. v. DAULAT AND ANOTHER, reported in (2001) 7 Supreme Court Cases 69 8. Their Lordships of the Apex Court considered the question as to whether a suit for specific performance of an agreement of sale of immovable property, without a claim for delivery of possession, can be treated as a "suit for land" under Clause 12 of the Letters Patent of the Bombay High Court and laid down the law thus.
" Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land".
.... In the instant case the suit is for specific performance of the agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed, as such it cannot be treated as a "suit for land"."
Thus, the law is well settled that a "suit for land" is a suit in which the relief claimed relates to adjudication of title to land or delivery of possession of land or immovable property.
8. The suit for which leave to sue is now sought for is a suit to recover money due under a mortgage and the relief does not relate to adjudication of title to land or immovable property or delivery of possession of the land. If it is so, the proposed suit is not a suit for land within the meaning of Clause 12 of the Letters Patent of this Court.
9. The applicant has sought for leave to sue the defendants urging that the cause of action for the suit has mainly arisen within the jurisdiction of this Court and in view of above discussion, the applicant is entitled for the leave and hence the application is allowed.

Vks

Index: yes.
Internet: yes.

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